IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 356 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASUDEV LAXMANDAS PANDIT

Versus

DIPAK RAJKUMAR LAKHANI THRO' FATHER & P.O.A

Appearance:

1. Civil Revision Application No. 356 of 2001
MR ASIM PANDYA for HL PATEL ADVOCATES for Petitioner No. 1
MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 03/10/2001

ORAL JUDGEMENT

1. The petitioner is the defendant in Special Civil Suit No.164/2000 in the Court of Civil Judge (S.D.), Godhra. The respondent has filed the said suit for declaration that the partnership firm stood dissolved with effect from 30-11-2000 and for other consequential reliefs. The petitioner on 26-12-2000 made an application under Section 8 of the Arbitration and

Conciliation Act, 1996. He contended that there was an arbitration clause in the partnership deed and prayed that a proper person should be appointed as arbitrator to adjudicate the disputes between the partners.

2. The learned Judge, however, took the view that the value of the subject matter of the suit is likely to exceed Rs.5 lacs and he has no jurisdiction to appoint the arbitrator in view of the notification dated 3-5-1996, whereby the Chief Justice of the High Court of Gujarat has made the scheme under Sub-section (10) of Section 11 of the Act.

3. Para 2 of the scheme provides that the request made under Sub-section (4) or Sub-section (5) or Sub-section (6) of Section 11 shall be made in writing and shall be accompanied by the documents enumerated in the scheme. Para 3 of the scheme designates Civil Judge (S.D.) for the purpose of dealing with the request made under para 2, where the value of subject matter does not exceed Rs.5 lacs.

4. Now, it is clear that these provisions will apply when the request for appointment of an arbitrator is made under Section 11 of the Act. However, in the present case, the application was made under Section 8 of the Act, which reads as follows:

> "8. Power to refer parties to arbitration where there is an arbitration agreement.-(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
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> (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
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> (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

5. It is obvious that under this section, the Judicial Authority before which an action is brought, has to refer the parties to arbitration if the conditions of

of Section 8 of the Act are satisfied. The Supreme Court in the case of "P.Anand Gajapathi Raju and Ors v. P.V.G. Raju (died) and Ors.", reported in AIR 2000 S.C. 1886, has held that even the Court in appeal can refer the parties to arbitration under the Act and that if the party, who wants the matter to be referred to arbitration, applies to the Court after submission of his statement and the party, who has brought the action does not object, there is no bar on the Court referring the parties to arbitration. It is further held in para 8 of the said decision as follows:

> "8. In the matter before us, the arbitration agreement covers all the disputes between the parties in the proceedings before us and even more than that. As already noted, the arbitration agreement satisfies the requirements of Section 7 of the new Act. The language of Section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the Award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the Award. The Court to which the party shall have recourse to challenge the Award would be the Court as defined in clause (e) of Section 2 of the new Act and not the Court to which an application under Section 8 of the new Act is made. An application before a Court under Section 8 merely brings to the Court's notice that the subject matter of the action before it is the subject matter of an arbitration agreement. This would not be such an application as contemplated under Section 42 of the Act as the Court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent Court within the meaning of Section 2(e) of the new Act."

6. The learned Trial Judge has failed to see that the application was under Section 8 and not under Section 11 of the Act and the provisions of the scheme notified under the Notification dated 3-5-1996 were not attracted. It is true that under Section 8, the Court does not appoint an arbitrator, but would merely refer the parties

to arbitration. In the present case, the prayer in the application is to appoint an arbitrator. The learned Counsel for the petitioner states that the petitioner will suitably amend the prayer in the application so as to bring it in coformity with the provisions of Section 8 of the Act. The learned Counsel for the respondent states that the respondent has no objection if the parties are referred to arbitration as prayed for by the petitioner in the said application. The impugned order is, therefore, set aside. The learned trial Judge is directed to pass a fresh order on the application (Ex.21) filed by the petitioner under Section 8 of the Act, after the petitioner suitably amends the prayer clause in the said application. The trial Court shall pass the order in light of the decision of the Supreme Court, which has been referred to hereinabove. Rule is made absolute accordingly. No order as to costs.

3-10-2001 (M.C.Patel,J.)
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